

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 10 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DENNIS FUGNETTI PHOTOGRAPHY
TRUST,

Plaintiff-Appellee,

and

DENNIS FUGNETTI, Katie Fugnetti trustee
of the Dennis Fugnetti Photography Trust,

Plaintiff,

v.

BIRD B GONE, LLC,

Defendant-Appellant,

and

DOES, 1-10, inclusive,

Defendant.

No. 23-55048

ORDER SETTING
ASSESSMENT CONFERENCE

Date: March 24, 2023

Time: 1:00 p.m. PACIFIC TIME

(DIAL-IN CONFERENCE)

DENNIS FUGNETTI PHOTOGRAPHY
TRUST,

Plaintiff-Appellant,

and

DENNIS FUGNETTI, Katie Fugnetti trustee
of the Dennis Fugnetti Photography Trust,

No. 23-55092

D.C. No. 8:19-cv-00847-SK

<p>Plaintiff,</p> <p>v.</p> <p>BIRD B GONE, LLC,</p> <p>Defendant-Appellee,</p> <p>and</p> <p>DOES, 1-10, inclusive,</p> <p>Defendant.</p>

The parties' joint motion to stay appellate proceedings (Docket Entry No. 5) is granted.

These cases shall continue to be held in abeyance. The Clerk is directed to temporarily close this court's docket for administrative purposes until March 31, 2023. This administrative closure is not a decision on the merits and no mandate will issue in connection with this order.

At any time, any party may request that these appeals be reopened.

The Mediation Program of the Ninth Circuit Court of Appeals facilitates settlement while appeals are pending. See Fed. R. App. P. 33 and Ninth Cir. R. 33-1.

The court has scheduled a dial-in telephone assessment conference with counsel and Circuit Mediator Robert Kaiser at the date and time indicated above to explore settlement potential.

Each attorney on the attached list of participants will receive an email with dial-in information.

If there are any changes or additions to the list, please notify the Mediation Office at mediation@ca9.uscourts.gov.

Also, if counsel has an unavoidable scheduling conflict, please notify Circuit Mediator Robert Kaiser immediately by email (Robert_Kaiser@ca9.uscourts.gov) and copy all counsel on any such communications.

All emails should include the Ninth Circuit case name and number in the subject line.

All discussions that take place in the context of the assessment conference are confidential. See Circuit Rule 33-1.

For more detailed information about the assessment conference, confidentiality, and the Mediation Program and its procedures generally, please see the attachment to this order and the Mediation Program web site: www.ca9.uscourts.gov/mediation.

FOR THE COURT:

By: Virna Sanchez
Deputy Clerk

LIST OF CONFERENCE PARTICIPANTS

DENNIS FUGNETTI PHOTOGRAPHY TRUST Plaintiff - Appellee	Ryan E. Carreon 714-617-8336 rcarreon@higbee.law Mathew Higbee 714-617-8300 mhigbee@higbee.law Higbee & Associates
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v.

BIRD B GONE, LLC Defendant - Appellant	Soyeun Choi 650-327-4200 schoi@thoits.com Brittany Nobles 650-327-4200 bnobles@thoits.com John van Loben Sels 650-327-4200 jvanlobensels@thoits.com Thoits Law
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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIRCUIT MEDIATION OFFICE

Website: www.ca9.uscourts.gov/mediation

Email: ca09_mediation@ca9.uscourts.gov

Phone: 415-355-7900

INFORMATION ABOUT ASSESSMENT CONFERENCES

Overview

The purpose of the assessment conference is to provide an opportunity for counsel and the Circuit Mediator to have a frank discussion about settlement. The mediator will explore the parties' interests in settlement and, if appropriate, work with counsel to design a process to pursue resolution of the dispute.

The conference will be conducted by one of the eight Circuit Mediators, all of whom are court employees with extensive mediation and litigation experience. The conference typically lasts from 30-60 minutes. The Circuit Mediators are authorized to file orders on most procedural matters, including vacating or moving the briefing schedule.

Counsel for each party that intends to file a brief in this matter should participate in the assessment conference. The lawyer with the closest relationship to the client should be on the call. Clients are not expected to participate in the assessment conference.

In advance of the conference, counsel should have a discussion with their clients about their goals in the litigation, its possible costs and outcomes (good and bad), the potential for further legal proceedings, and what issues beyond the litigation might be explored in mediation.

During the conference, counsel and the Circuit Mediator will discuss the factual and legal background of the dispute, the legal issues involved in the litigation and on appeal, any related legal proceedings, and any other

considerations that may affect the parties' willingness to engage in settlement discussions. The scope of discussion is not limited to the issues on appeal: it may include related legal proceedings or any other issues between the parties.

Confidentiality

Settlement-related information disclosed to a Circuit Mediator will be kept confidential and will not be disclosed to the judges deciding the appeal or to any other person outside the Mediation Program participants. Ninth Cir. R. 33-1.

All participants in the assessment conference are required to abide by the court's confidentiality rules, which are set forth in Rule 33-1 and can be found at: www.ca9.uscourts.gov/mediation. With limited exceptions, any communication made by the Circuit Mediator or any participant during the conference may not be used in any pending or future proceeding in this court or any other forum and may not be disclosed to anyone who is not a participant. Ninth Cir. R. 33-1.

Likely Outcomes of Assessment Conference

At the conclusion of the assessment conference, the Circuit Mediator may confirm in an order the agreements of the parties regarding the scope, process and timing of any further settlement efforts. Typical settlement processes include in-person mediation sessions, telephone settlement dialogues facilitated by the Circuit Mediator, or direct discussions between counsel.

The parties may agree to extend briefing in order to focus on settlement efforts. In most cases, the deferral of briefing will not delay disposition of the appeal because the date of the filing of the notice of appeal controls when an appeal is assigned to a three-judge panel for decision.

If at any point the parties choose not to pursue settlement efforts, the Circuit Mediator will work with counsel to resolve any outstanding procedural issues and will enter orders effectuating any procedural agreements.

More information is available on the Mediation Circuit link on the Ninth Circuit website www.ca9.uscourts.gov/mediation.